

Appellant-defendant Christopher Stephens appeals his convictions for two counts of Confinement,¹ a class B felony, and Carrying a Handgun Without a License,² a class A misdemeanor. Specifically, Stephens argues that his convictions must be reversed because the trial court abused its discretion in excluding evidence of gambling activities at the victim's residence and improperly admonished the jury to disregard evidence of gambling. Stephens also challenges the appropriateness of the fifteen-year aggregate sentence that was imposed. Finding no error, we affirm the judgment of the trial court.

FACTS

On August 22, 2006, seventeen-year-old Brandon Stum and his girlfriend, Jonnae Tinson, were asleep at Stum's Indianapolis apartment. At approximately 5:30 a.m., Stum awoke when he heard someone kick in his front door. Stephens—with whom Tinson and Stum were acquainted—and two accomplices rushed into Stum's bedroom carrying firearms and demanded money. The men held Stum and his girlfriend at gunpoint for nearly forty minutes, ordered them to lay face down on the floor, and threatened to kill them if they did not give them money. After one of the individuals took \$2,000 from a closet, one of the individuals directed Tinson, at gunpoint, to drive him to the residence of Kim Glover—Stum's mother—to obtain more money. While holding Stum at gunpoint, Stephens and the others permitted Tinson to enter Glover's apartment to retrieve the money. However, Tinson immediately closed the door and called the police.

¹ Ind. Code § 35-42-3-3.

² Ind. Code § 35-47-2-1.

When the men released Stum and allowed him to enter Glover's residence, they panicked and fled the scene. When the police arrived at Glover's apartment, Stum informed one of the officers that they had been robbed at gunpoint. Thereafter, Tinson and Stum identified the four men from a police photo array.

As a result of the incident, Stephens was charged with two counts of criminal confinement, a class B felony, robbery, a class B felony, and carrying a handgun without a license, a class A misdemeanor, as an adult. At some point during a jury trial that commenced on July 30, 2007, Stephens's counsel cross-examined Stum regarding alleged gambling activities at his apartment. After Stum denied involvement in such activities, Stum was asked whether he had "engage[d] in dice games" with any of the accomplices. Tr. p. 66-67. At that point, the State objected to the relevance of the evidence, and during a sidebar conference, Stephens's defense counsel argued that he desired to present evidence that Stephens merely sought to obtain the money to satisfy a gambling debt. In response, the prosecutor argued that Stephens was attempting to introduce evidence of a prior bad act and a "Rule 404(b) disclosure" had not been provided. *Id.* at 68. The trial court sustained the objection and admonished the jury to disregard any questions or answers regarding gambling activity. At some point later in the trial, another defense witness testified that he and other individuals had gambled at Stum's apartment and that the money was taken to satisfy a gambling debt. The State did not object to that testimony.

Following the presentation of the evidence, Stephens was found guilty on both counts of confinement and carrying a handgun without a license. However, the jury

acquitted Stephens of robbery. Thereafter, on September 14, 2007, the trial court sentenced Stephens to fifteen years of incarceration on each count of criminal confinement and to one year on the handgun charge. The trial court identified Stephens's criminal history as an aggravating factor. All sentences were ordered to run concurrently with each other. Stephens now appeals.

DISCUSSION AND DECISION

I. Exclusion of Evidence

Stephens first claims that his convictions must be reversed because the trial court erred in prohibiting him from cross-examining Stum regarding gambling activities that allegedly took place in Stum's apartment. Stephens also claims that the trial court committed reversible error in admonishing the jury to disregard any evidence of gambling.

We initially observe that Stephens failed to make an offer of proof when cross-examining Stum. Therefore, the issue is waived. See Arhelger v. State, 714 N.E.2d 659, 666 (Ind. Ct. App. 1999) (holding that to preserve a claim of error regarding the exclusion of evidence, a party must make a proper offer of proof even on cross-examination).

Waiver notwithstanding, we note that a trial court has broad discretion in determining the admissibility of evidence. Truax v. State, 856 N.E.2d 116, 124 (Ind. Ct. App. 2006). Moreover, the trial court's evidentiary rulings will be reversed on appeal only for an abuse of discretion. Mathis v. State, 859 N.E.2d 1275, 1279 (Ind. Ct. App. 2007). Although an abuse of discretion occurs when the trial court's decision is clearly

against the logic and effect of the facts and circumstances before it, we will not reverse unless the error is inconsistent with substantial justice or a defendant's substantial rights are affected. Stringer v. State, 853 N.E. 2d 543, 546 (Ind. Ct. App. 2006).

In this case, Stephens maintains that Stum's testimony would have established that the money that was taken from the apartment was to satisfy a gambling debt and not a robbery. Tr. p. 67-68. However, such testimony would not have amounted to exculpatory evidence. See Johnson v. State, 253 Ind. 570, 575, 255 N.E.2d 803, 806 (1970) (holding that the existence or nonexistence of gambling activities is not an essential element to support a conviction for inflicting physical injury while in the commission of a robbery). Moreover, as noted above, the jury did hear evidence later in the trial—absent any objection from the State—that the money was taken for purposes of collecting a gambling debt. And the jury ultimately acquitted Stephens of robbery. Tr. p. 275, 277-79. In light of these circumstances, we cannot say that the trial court's ruling prohibiting Stum from testifying about his gambling activities on cross-examination or its decision to admonish the jury to disregard such evidence was an abuse of discretion. Therefore, Stephens's claim fails.

II. Sentencing

Stephens next claims that the fifteen-year aggregate sentence is inappropriate in light of the nature of the offenses and his character. More specifically, Stephens maintains that a fifteen-year aggregate sentence is not warranted because “what actually occurred was something less than the criminal offense alleged by the State,” and the “true

findings” as a juvenile do not justify the sentence. Appellant’s Br. p. 10. Thus, Stephens claims that we should revise his sentence to an aggregate term of ten years.³

Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court’s decision, we find that the sentence is “inappropriate in light of the nature of the offense and the character of the offender.” We defer to the trial court during appropriateness review, Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007), and we refrain from merely substituting our judgment for that of the trial court. The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the offenses, the evidence established that after Stephens and the others broke into the apartment, they held Stum and Tinson at gunpoint for nearly forty minutes. Tr. p. 45. Moreover, the victims gave Stephens and his accomplices the money because Stephens and the others “threatened to kill [them].” Id. at 45. Also, as discussed above, Stephens and the others again held Stum and Tinson at gunpoint on the way to Glover’s apartment. In light of these circumstances, Stephens’s nature of the offense argument does not aid his inappropriateness claim.

Turning to Stephens’s character, the record reflects that although Stephens was only seventeen years old when he committed these offenses, he had accumulated six “true findings” as a juvenile over a two-year period. PSI p. 3-5. Those true findings included adjudications for battery, theft, disorderly conduct, and escape. Id. Despite previous

³ In accordance with Indiana Code section 35-50-2-5, “a person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.”

incarcerations, Stephens continues to reoffend. Indeed, Stephens was released from the Department of Correction after completing his sentence for battery on June 15, 2006. Id. at 3. Within months of his release, Stephens committed the instant offenses. Id. at 5. Inasmuch as Stephens has failed to show any signs of conforming his conduct to the law and continues to reoffend, we can only conclude that he requires the correctional treatment that incarceration will provide. As a result, we conclude that Stephens's sentence is not inappropriate.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.